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Division of Oil and Gas

# BEFORE THE OIL & GAS COMMISSION

UNITED STATES FIDELITY &  
GUARANTY COMPANY,

Appellant,

-vs-

DIVISION OF OIL & GAS,

Appellee.

~~CONFIDENTIAL~~

Review of Chief's Order 97-122  
(Don H. Baldwin)

## ORDER GRANTING MOTION TO DISMISS APPEAL

Appearances: Jane Bennett Poling, on behalf of Appellant United States Fidelity & Guaranty Company; Raymond Studer, Assistant Attorney General, Counsel for Appellee Division of Oil & Gas.

Date Issued:

3/9/98

## BACKGROUND

This matter came before the Oil & Gas Commission upon appeal by the United States Fidelity & Guaranty Company [U.S. F & G] from Chief's Order 97-122. This Chief's Order required the forfeiture of bond issued by U.S. F & G, as surety, in support of an oil & gas well operated by Don H. Baldwin.

Chief's Order 97-122 was issued to U.S. F & G on July 29, 1997. The Order was sent by Certified Mail. On August 8, 1997, the Order was received by U.S. F & G. Chief's Order 97-122 contained instructions for filing an appeal with the Oil & Gas Commission. The instructions informed U.S. F & G that it was required to file its notice of appeal within 30 days of its receipt of the Chief's Order. U.S. F & G's appeal was filed with the Oil & Gas Commission on November 17, 1997, which is more than 3 months after U.S. F & G's receipt of Chief's Order 97-122.

On December 30, 1997, the Division filed a Motion to Dismiss this appeal, stating that the appeal was not filed in a timely manner. The Division argued that this failure constitutes a jurisdictional defect, requiring dismissal of this appeal. U.S. F & G has not responded to the Division's Motion.

## CONCLUSIONS OF LAW

O.R.C. §1509.36 sets forth the method by which an appeal is perfected to the Oil & Gas Commission. That section of law provides inter alia:

Any person claiming to be aggrieved or adversely affected by an order by the chief of the division of oil and gas may appeal to the oil and gas [commission] . . . Such appeal shall be filed with the [commission] within thirty days after the date upon which appellant received notice by registered mail of the making of the order complained of. Notice of the filing of such appeal shall be filed with the chief within three days after the appeal is filed with the [commission] . . .

(Emphasis added.)

Where a statute confers the right of appeal, adherence to the conditions imposed thereby is essential to the enjoyment of that right. American Restaurant and Lunch Co. v. Glander, 147 Ohio St. 147 (1946).

The filing deadlines for notices of appeal are mandatory and jurisdictional. Indeed, the Oil & Gas Commission has dismissed prior appeals for the appellant's failure to file an appeal within the statutorily mandated 30 day appeal period. See: Quest Energy Corp. v. Biddison, Oil & Gas Commission appeal #232 (March 23, 1987); Progressive Oil & Gas, Inc. v. Biddison, Oil & Gas Commission appeal #307 (August 22, 1988); Charles & Loretta Mertens v. Mason, Oil & Gas Commission appeal #494 (July 16, 1992); Paul Grim v. Mason, Oil & Gas Commission appeal #577 (June 26, 1996); Hanley Hardin v. Mason, Oil & Gas Commission appeal #566 (June 27, 1996).

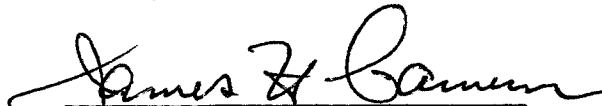
In order to invoke the jurisdiction of the Commission, an appellant must file the notice of appeal in a timely manner. By law, the failure of an appellant to file its appeal within the statutorily mandated time periods results in the dismissal of the appeal. U.S F & G failed to satisfy this statutory requirement. For this reason, the Oil & Gas Commission lacks jurisdiction to hear and decide the immediate appeal.

## **ORDER**

The Oil & Gas Commission has read and considered the Appellee's Motion to Dismiss. The Commission has also reviewed its prior orders and decisions. The Commission finds the Appellee's arguments well taken. WHEREFORE, the Commission **GRANTS** Appellee's Motion and **DISMISSES** appeal no. 635, with prejudice.

  
WILLIAM J. TAYLOR, Chairman

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GAIL IGNATZ-HOOVER  
JAMES H. CAMERON

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\*RECUSED\*  
BENITA KAHN, Secretary  
JOHN A. GRAY

U.S Fidelity & Guaranty  
Appeal #635

## **INSTRUCTIONS FOR APPEAL**

This decision may be appealed to the Court of Common Pleas of Franklin County, within thirty days of your receipt of this Order, in accordance with Ohio Revised Code Section §1509.37.

### **DISTRIBUTION:**

Jane Bennett Poling  
Certified Mail #: P 260 035 089

Raymond Studer  
Inter-Office Certified Mail #: 5447


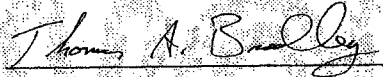
## REVENUE RECEIPT REGISTER

Date	Received From	Check #	Purpose	Amount	Initials	Fiscal Deposit
5/13/98	U.S. F. & G	11-898116-0	Bond	5,000.00	df	

Bill ID Number	:	
Claim Number	:	9901-208703-01-1
Claimant Name	:	STATE OF OHIO
Date of Loss	:	8/11/97
Policy Number	:	000000000
Insured Name	:	BALDWIN, DON H.
Check Amount	:	\$5,000.00

Remarks : BOND :  
NUMBER : 31013010925912  
FULL AND FINAL PAYMENT

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MAY 15 1998  
Division of Oil and Gas

 P.O. Box 1138 Baltimore, MD 21203-1138		UNITED STATES FIDELITY AND GUARANTY COMPANY		<div>15-158 540</div> CHECK NUMBER 11-898116-0 9901-208703-01-1	
				DATE 05/12/98	
<b>PAY **FIVE THOUSAND AND NO/100 DOLLARS**</b>					
TO THE ORDER OF		TREASURER-STATE OF OHIO C/O RAYMOND J STUDER 4383 FOUNTAIN SQUARE BLDG. B-3 COLUMBUS OH 43224-1362		<div>CHECK AMOUNT \$*****5,000.00</div>	
Void if not presented for payment within six (6) months from date of issue					
				 Authorized Signature	
First National Bank of Maryland, Washington, D.C. Accounting Center					

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